

**Letters of Findings Number: 02-20120469P**  
**Corporate Income Tax**  
**For the Year 2009**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration – Ten Percent Penalty – Underpayment of Tax.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; IC § 6-8.1-6-1; [45 IAC 15-11-2](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of the ten percent penalty for underpayment of tax, as well as interest.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state corporation doing business in Indiana. The Indiana Department of State Revenue ("Department") assessed Taxpayer a ten percent penalty for underpayment of tax by the original due date of Taxpayer's 2009 corporate income tax return. Taxpayer timely protested the assessment of penalty and interest. A hearing was held on Taxpayer's protest and this Letter of Findings ensues. Additional facts will be provided as needed.

**I. Tax Administration – Ten Percent Penalty – Underpayment of Tax.**

**DISCUSSION**

The Department imposed a ten percent penalty and interest on Taxpayer because the Department found that Taxpayer – having filed a 2009 amended corporate income tax return adjusting its apportionment factor thus owing more tax – failed to remit ninety percent of the full amount of corporate income tax on or before the original due date for payment.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Under IC § 6-8.1-10-2.1, penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1 further states in relevant part:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make **an affirmative showing of all facts alleged as a reasonable cause** for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

**(Emphasis added).**

The Department also notes that [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, **the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.** Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;

- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

**(Emphasis added).**

The applicable statute is IC § 6-8.1-6-1, which provides in relevant part that:

- (a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90[percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.
  - (b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.
  - (c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90[percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.
- (Emphasis added).

Taxpayer has made an affirmative showing of reasonable cause for underpaying its estimated 2009 taxes. IC § 6-8.1-10-2.1, IC § 6-8.1-6-1 and [45 IAC 15-11-2](#). The assessment of the ten percent penalty is waived. However, pursuant to IC § 6-8.1-10-1(e), the Department cannot waive interest.

#### **FINDING**

Taxpayer's protest of the imposition of penalty is sustained. However, Taxpayer's protest of the interest is denied.

*Posted: 01/30/2013 by Legislative Services Agency*  
An [html](#) version of this document.